

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NATHAN HOYT FAULKNER
and
RONALD D. NORDENBROCK

Appeal No. 95-3444
Application 08/037,304¹

ON BRIEF

Before CALVERT, STAAB and McQUADE, Administrative Patent Judges.
CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to 21, all the claims in the application. Claim 1 is illustrative of the subject matter in issue:

1. A busway joint for connecting at least two busbars having a predefined thickness, the joint comprising:

¹ Application for patent filed March 25, 1993.

at least two substantially rectangular insulators each defining at least a first opening and fabricated from a pulltruded [sic: pultruded] insulating material;

at least one conductive connector plate having material press formed to define at least a second opening, a portion of the material from the second opening being press formed into a tab extending at substantially 90 degrees from the plate adjacent the second opening for a distance less than the predetermined thickness^[2] and greater than 50 percent of the thickness; and

at least one fastener disposed within the first and second openings, where the connector plate is located between the insulators and the fastener is configured to force the insulators into contact with the connector plate and the busbars.

The references relied upon by the examiner in the final rejection are:

Weimer et al. (Weimer)	3,183,298	May 11, 1965
Jorgensen	3,647,937	Mar. 7, 1972
Cook	4,146,285	Mar. 27, 1979
Slicer et al. (Slicer)	4,705,334	Nov. 10, 1987
Beberman et al. (Beberman)	4,842,533	Jun. 27, 1989
Gagnon et al. (Gagnon)	4,886,940	Dec. 12, 1989

Claims 1 to 21 stand rejected as unpatentable under 35 U.S.C. § 103 over the following combinations of references:

(1) Claims 1 to 5, 8 to 11, 14 to 16 and 19, Gagnon in view of Beberman;

(2) Claims 6, 12, 17 and 20, Gagnon in view of Beberman and either of Weimer, Cook or Slicer;

² The expression "the predetermined thickness" has no antecedent basis. In the interest of avoiding piecemeal appellate review, we will construe it as "the predefined thickness," but claim 1 and the other independent claims should be appropriately corrected to remove this inconsistency.

(3) Claims 7, 13, 18 and 21, Gagnon in view of Beberman and Jorgensen.

With regard to claim 1, appellants do not contend that Gagnon does not disclose any of the recited structure, except that:

(I) Insulators 13 of Gagnon are not "fabricated from a pulltruded [sic] insulating material;" and

(II) Gagnon does not disclose plate 11 or 12 as having "a tab extending . . . 50 percent of the thickness."

First considering contention (II), the examiner takes the position that it would have been obvious to one of ordinary skill in the art to employ the claimed tabs with the Gagnon plates 11, 12 in view of Beberman's disclosure of a busway joint having plates 33 to 38 spaced by means of depressions 39 stamped in the plates to yield recesses 33b and projections 33a surrounding the openings for fastener 64 (column 2, line 55 to column 3, line 5). In response to the examiner's identification of recess 33 as a tab on page 4 of her answer, appellants argue on page 3 of their reply brief that this is not a "reasonable interpretation of the elements in accordance with their dictionary definitions. Specifically, a 90 degree spacer tab is not a recess." The examiner responds in the first supplemental answer (Paper No. 12)

that "recess 33b [of Beberman] can be compared to a tab," and the Beberman tab extends at substantially 90 degrees from plate 33.

We will not sustain this rejection, for even if Gagnon were modified in view of Beberman as proposed by the examiner, we do not consider that the resulting structure would contain tabs as recited in claim 1. In the first place, we do not believe that the projections and recesses 33a and 33b of Beberman may be construed as "tabs." In general, words in a claim will be given their ordinary and accustomed meaning, unless it appears that the inventor used them differently, Envirotech Corp. v. Al George, Inc., 730 F.2d 753, 759, 221 USPQ 473, 477 (Fed. Cir. 1984), and a claim will be given its broadest reasonable interpretation, consistent with the specification. In re Prater, 415 F.2d 1393, 1404, 162 USPQ 541, 550 (CCPA 1969). The dictionary³ contains a large number of definitions of the word "tab;" consistent with appellants' specification, and as normally applied in a structural sense, we consider that "tab" connotes a cantilevered member extending from a surface, such as "a projection from a card used as an aid in filing" or an "appendage," both of which are dictionary definitions, or such as the tabs 22 shown in the

³ Webster's Third New International Dictionary (1971).

patent⁴ attached to appellants' brief. On the other hand, we do not find any dictionary definition of "tab" which would encompass a depression, nor do we consider that, given its ordinary and accustomed meaning, "tab" would include the projections and/or recesses 33a and 33b disclosed by Beberman.

Secondly, even if the Beberman recesses might be construed as "tabs," they are not "press formed" from "a portion of the material from the second opening," as recited in claim 1. While this claim language is somewhat inartfully drafted, it is evident that when read in light of the disclosure at page 25, lines 24 to 30 of appellants' specification, this language is intended to mean that the tab is formed from some of the material that would otherwise be removed in forming the second opening. Although it is certainly true that in the Beberman plates 33 to 38 the hole for the bolt 64 and the depression 33b are both formed from the material which constitutes the plate, as the examiner indicates on page 4 of her answer, the recess ("tab") of Beberman is not press formed from "a portion of the material from the second opening" (emphasis added), as claimed, but rather the recess is formed from a portion of the material that surrounds the second opening.

⁴ Patent No. 5,072,848

Appeal No. 95-3444
Application 08/037,304

Accordingly, since the combination of Gagnon and Beberman would not result in, or render obvious, a busway joint having tabs as recited in claim 1, the rejection of that claim will not be sustained.

The other independent claims, claims 8, 14 and 19, also recite tabs in essentially the same manner as claim 1, and the additional references applied in the rejections of dependent claims 6, 7, 12, 13, 17, 18, 20 and 21 do not supply the deficiencies noted with regard to the combination of Gagnon and Beberman. Therefore, the rejections of claims 2 to 21 will also not be sustained.

In view of the foregoing, it is unnecessary to consider appellants' contention (I) concerning the "pulltruded [sic]" limitation.

Conclusion

The examiner's decision to reject claims 1 to 21 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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LAWRENCE J. STAAB)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND

Appeal No. 95-3444
Application 08/037,304

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Administrative Patent Judge)	

Appeal No. 95-3444
Application 08/037,304

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